IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.230 OF 1998

IN

APPEAL FROM ORDER NO.295 OF 1998

WITH

CIVIL APPLICATION NO.8871 OF 2000

Gajanan V.Rane @ Shamu Rane ...Petitioner

Versus

Sumanbai Shaligram Rajguru & Ors. ...Respondents

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Mr.S.A.Swant for Petitioner.

Mr.P.Y.Kulkarni for Respondents 1 to 4.

Mr.A.R.Patil, A.G.P. for Respondents 5 and 6.

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CORAM: A.M.KHANWILKAR, J.

APRIL 4, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant materials on record.

2. The Petitioner has approached this Court complaining that the Respondents 1 to 4 are obstructing and/or disturbing the possession of the

Petitioner in respect of Santosh Nagar Zopada No.LAA/161/1/1/1976 inspite of injunction order passed by this Court against the Respondent No.1 on 22nd April 1998 in Appeal from Order No.295 of 1998. This Petition has been filed on 19th August 1998, which makes specific reference to the incident of 21st July 1998. On that date, the Respondents according to the Petitioner, assaulted the son of the Petitioner and also attempted to throw out the belongings of the Petitioner lying in the abovestated zopada. The Petitioner immediately rushed to the local Police Station and registered complaint in that behalf, which is recorded as FIR No.196. As the Petitioner apprehended similar attempts by the Respondents, present Petition has been filed to take appropriate action against the Respondents. During the pendency of this Petition, Petitioner has filed further application being Civil Application No.8871 of 2000. In Paragraph 5 of the said application, the Petitioner has adverted to several other instances which occurred from time to time obstructing the peaceful enjoyment and possession of the premises in occupation of the Petitioner. Notice was issued to the Respondents.

3. At the outset, it may be clarified that so far as relief against Respondents 2 to 4 is concerned, that is on the assertion that they aided and abetted the Respondent No.1 in committing wilful disobedience of the order of this Court dated 22nd April 1998. Admittedly, Respondents 2 to 4 were not party to the Appeal from Order in which the injunction order came to be passed on 22nd April 1998. To that extent, the matter will be one of criminal contempt, for which, the Petitioner will have to pursue remedy before the Division Bench, if so advised. In other words, in the present decision, I am confining the Judgment to allegations against Respondent No.1, who was party to the Appeal from Order in which injunction was passed against her on 22nd April 1998.

4. In response to the Contempt Petition, affidavits have been filed before this Court. During the course of argument, the principal contention of the Respondent No.1 as was canvassed is that the Respondent No.1 had filed Suit before the City Civil Court in which following interim relief was claimed which was granted on 18th

February 1998. The same reads thus:

> "(a) Pending the hearing and final disposal of the suit the defendant (i.e. the Petitioner herein) his servants, agents and/or any one claiming through him be restrained by an order and injunction of this Hon'ble Court, from dispossessing the Plaintiff (i.e. the 1st Respondent) from the premises/structure NO.1648 admeasuring 7' x 10' being resident-cum-business premises situate at Sandesh Nagar zopadpatti, Kurla-Andheri Road, Bail Bazar, Kurla, Mumbai 400 072 without due process of law."

5. According to the Respondent No.1, the relief granted in favour of Respondent No.1 has not been disturbed by this Court. Whereas, the same has been preserved in terms of order dated 22nd April 1998. According to the Respondent No.1, however, the direction not to disturb the possession of the Petitioner of the above numbered zopada is on erroneous basis that the Petitioner is in possession of the structure in respect of which injunction was granted by the Trial Court in terms of relief (a) in the Notice of Motion. To consider this contention, it will be appropriate to reproduce the order passed by this Court dated 22nd April 1998 in Appeal from Order No.295 of 1998 in

its entirety. The same reads thus:

> "Heard learned counsel for the parties.
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> The dispute is regarding occupancy rights of the suit premises between the parties.
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> As per the letter issued by the competent authority, the appellant-defendant is staying in Santosh Nagar Zopada NO.LAA/16/1/1/1976. Though the appellant is not a party to the proceedings, her husband has been shown as a defendant. The ad-interim relief granted by the trial court affects the rights of the appellant herein. Therefore, without disturbing the order passed by the trial court, the respondent-plaintiff is directed not to disturb the possession of the appellant of the aforesaid zopda. With the aforesaid observation and direction, this appeal is disposed of." (emphasis supplied)

6. On closer scrutiny of the order passed by the City Civil Court as also by this Court dated 22nd April 1998, it is obvious that the relief in favour of the Respondent No.1 granted by the Trial Court is in respect of structure No.1648 admeasuring 7' x 10' situated at Sandesh Nagar, M.N.Road, Kurla-Andheri Road, Bail Bazar, Kurla, Mumbai-400 072. Whereas, the protection granted to the Petitioner by this Court is in respect of Santosh Nagar Zopada No.LAA/16/1/1/1976. It is in this backdrop, the argument canvassed by the

Respondent No.1 proceeds on the basis that the structure described in the order passed by this Court is in fact in possession of the Respondent No.1 and the Petitioner has no concern thereto. To support the contention that the structure belong to the Respondent No.1 described as Structure No.1648 reliance is placed on the report of the City Survey Officer, Kurla dated 18th December 2000. It is not possible to accept this submission for the simple reason that the Respondent No.1 was party to the Appeal from Order filed by the Petitioner. The Respondent No.1 was duly heard before the order was passed. If the order as passed by this Court on 22nd April 1998 was incorrect or inappropriate, the Respondent No.1 would have definitely moved this Court for clarification of that order. That has not happened in the present case. Instead, Respondent No.1 suffered the order passed by this Court on 22nd April 1998. Going by the said order, it is obvious that the Respondent No.1/Plaintiff was directed not to disturb the possession of the Petitioner of the concerned zopada described as Santosh Nagar Zopada No.LAA/16/1/1/1976. The confusion now raised before this Court is of no avail to the Respondent No.1. The Petitioner has

rightly relied on the affidavit filed by the Respondent No.1 before this Court dated 29th September 1998. In Paragraph 5 of the affidavit, the Respondent No.1 has implicitly conceded that the possession of the said zopada was with the Petitioner herein. It is stated in Para 5 of this affidavit that when the Respondent No.1 came back on 7th July 1998, she found that the present Petitioner and his wife had taken over forcible possession of the suit premises. This is obviously to get over the nature of the order passed by this Court on 22nd April 1998.

7. Suffice it to observe that from the order dated 22nd April 1998, it is obvious that not only the Court, but also the Respondent No.1 has accepted the stand of the Petitioner that he was in possession of Santosh Nagar Zopada No.LAA/16/1/1/1976. It is too late in the day for the Respondent No.1 to contend that the Petitioner was never in possession of the said structure.

8. In the circumstances, I have no hesitation in taking the view that the allegation set out in the Petition clearly discloses that the Respondent

No.1 and her family members have attempted to obstruct the possession of the Petitioner in respect of the said premises which act is obviously wilful disobedience of the order passed by this Court. I am inclined to take this view as it is found from the further application filed by the Petitioner before this Court being Civil Application No.8871 of 2000 that the Respondents, Respondent No.1 in particular, has on several dates referred to in Paragraph 5 of the Application had disturbed the Petitioner's possession in the stated terms. In other words, the Respondent No.1 is guilty of civil contempt, having wilfully breached the direction given by this Court in order dated 22nd April 1998 in Appeal from Order No.295 of 1998.

9. The next question that arises for my consideration is the quantum of sentence. The Respondent No.1 through her Counsel, submits that the Court may take lenient view of the matter. This is so because the Respondent No.1 is the only earning member in the family. Her husband as well as sons have expired sometime back. The conduct of the Respondent No.1 does not merit any indulgence.

In any case, with a view to allow the Respondent No.1 to purge the contempt, the Respondent No.1 is directed not to interfere with the possession of the Petitioner in respect of Santosh Nagar Zopada No.LAA/16/1/1/1976 in any manner either herself or through any other person. In case, any further breach is committed by the Respondent No.1 and reported by the Petitioner, either to this Court or the Trial Court, the Respondent No.1 shall have to suffer civil imprisonment for a period of six months and also pay fine in the sum of Rs,2,000/- (Rupees Two Thousand) in terms of Section 12 of the Act.

10. This order of sentence is kept in abeyance to observe the conduct of the Respondent No.1 till the disposal of the Suit or till further order to be passed by this Court.

11. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.